

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JULY 11 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0399-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
TERRANCE ANTHONY ALSTON,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20020631

Honorable Patricia G. Escher, Judge

REVIEW GRANTED; RELIEF DENIED

Terrance Anthony Alston

Buckeye
In Propria Persona

E S P I N O S A, Judge.

¶1 Pursuant to a plea agreement, petitioner Terrance Alston was convicted of attempted child molestation, a class three felony and a dangerous crime against children. The trial court suspended the imposition of sentence and placed Alston on probation for

twenty-five years. Alston has previously filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., arguing the trial court abused its discretion in denying his request to withdraw his guilty plea. This court denied relief on Alston’s petition for review from the trial court’s denial of that petition. *State v. Alston*, No. 2 CA-CR 2003-0202-PR (decision order filed July 30, 2004). In January 2004, Alston admitted having violated the conditions of his probation, and the trial court revoked his probation and sentenced him to a presumptive prison term of ten years. Alston then filed a petition for post-conviction relief, claiming he should be resentenced because a significant change in the law applies to his case pursuant to Rule 32.1(g), Ariz. R. Crim. P. The trial court summarily dismissed his petition, and this petition for review followed. We will not disturb a trial court’s ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none here.

¶2 Contending our decision in *State v. Gonzalez*, 216 Ariz. 11, 162 P.3d 650 (App. 2007), was a significant change in the law, Alston argues he should not have been sentenced pursuant to A.R.S. § 13-604.01. In *Gonzalez*, we held that § 13-604.01, a special sentencing statute for dangerous crimes against children, by its terms did not apply to Gonzalez’s conviction for attempted sexual conduct with an eleven-year-old victim. *Id.* ¶¶ 8-9. We concluded that, although “the legislature likely did not intend to omit the offense of attempted sexual conduct with a minor under twelve years of age from § 13-604.01,” *id.* ¶ 10, “the plain language of § 13-604.01 does not encompass attempted sexual conduct with

a victim under the age of twelve.” *Id.* ¶ 9. Further, we observed, “it is not within either the trial court’s or this court’s authority to amend a statute to correct what appears to have been legislative oversight.” *Id.* ¶ 10.

¶3 Alston contends that § 13-604.01 does not apply to attempted child molestation, the offense to which he pled guilty, just as we found in *Gonzalez* it did not apply to attempted sexual conduct with a minor under the age of twelve. However, because *Gonzalez* only applies to the specific situation presented in that case, the trial court correctly found *Gonzalez* did not apply to Alston, who had “pled guilty to attempted molestation of a child and was sentenced under A.R.S. § 13-604.01(D), which does not have the specific age restrictions of subsection [(C), the subsection implicated in *Gonzalez*].”

¶4 We likewise find no merit to Alston’s unsupported argument that § 13-604.01 does not apply to *any* dangerous crimes against children when they are merely preparatory offenses. His contention is refuted by § 13-604.01(N),¹ which defines second-degree dangerous crimes against children as any of the listed offenses when preparatory, rather than completed. Subsection (J) links the definition of a second-degree dangerous crime against

¹The version of § 13-604.01 in effect at the time Alston committed his offenses has been amended and the subsections renumbered. However, because the relevant language has not changed, we refer to the current version of the statute. *See* 2001 Ariz. Sess. Laws, ch. 334, § 7; 2005 Ariz. Sess. Laws, ch. 2, § 1; 2005 Ariz. Sess. Laws, ch. 188, § 2; 2005 Ariz. Sess. Laws, ch. 282, § 1; 2005 Ariz. Sess. Laws, ch. 327, § 2; 2006 Ariz. Sess. Laws, ch. 295, § 2.

children to the offenses listed in subsections (C) and (D) of § 13-604.01. Alston's offense, child molestation, is included in subsection (D).

¶5 Because we conclude the trial court did not abuse its discretion by dismissing Alston's petition for post-conviction relief, we grant the petition for review but deny relief.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge